IN THE HIGH COURT OF JUDICATRE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

S.B. Civil Misc. Appeal No.116/2003

Indian Oil Corporation Ltd. V/s Union of India

Date of Order : September, 2006

HON'BLE MR. R.S. CHAUHAN, J.

Mr.Krishna Verma, for the appellant.
Mr.A.K. Bhargava, for the respondent.

By Court:

The appellant has challenged the order dated 9.11.2000 passed by the Railway Claims Tribunal, Jaipur Bench, Jaipur (henceforth to be referred to as 'the learned Tribunal', for short) whereby the learned Tribunal has dismissed the claim application filed by the appellant.

Briefly, the facts of the case are that according to the appellant, a consignment of ten tank wagons containing superior kerosene oil (henceforth to be referred to as 'SKO', for short) was booked by the appellant with the Railway Administration vide Railway Receipt No.823935 dated 30.10.1996. The said consignment was to be carried from Khari Rohar Road to

Dhurmai Jhagina. Out of the said consignment, one of the Wagon viz. Wagon No.WR-916537 containing 67800 liters of SKO arrived at destination on 3.11.1996 in leaking condition. Since the appellant had bona fide apprehension that there would be shortage in the consignment because of the leak, they requested the railway authorities to make a joint dip examination of the said consignment. After a joint dip examination was conducted, a shortage of 814 liters of SKO was discovered. A shortage certificate showing the said shortage was issued by the railway in favour of the appellant. Subsequently, due to the shortage, the appellant filed a claim application before the learned Tribunal for seeking compensation of Rs.5,903/-. However, vide order dated 9.11.2000 the said claim application was dismissed by the learned Tribunal as mentioned above. Hence, this appeal before this Court.

Mr. Krishna Verma, the learned counsel for the appellant, has argued that the learned Tribunal has dismissed the claim application ostensibly on the ground that subsequently, the consignment was accepted

by the claimant after giving a clear receipt to the railways. However, according to the learned counsel, with the existence of the shortage certificate issued by the railways, the railways could not deny its liability for the shortage. Therefore, the learned Tribunal has erred in ignoring the shortage certificate issued by the respondent.

On the other hand, Mr. A.K. Bhargava, the learned counsel for the respondent, has strenuously argued that once the consignment was been received by the appellant after giving a clear receipt to the railways, the railways cannot be held liable for any shortage in the consignment. Therefore, he has supported the impugned order.

We have heard both the learned counsels for the parties and have perused the impugned order.

Undoubtedly, the railways is a bailee of the consignment. As a bailee, it is the cardinal duty of the railways to look after the consignment in the same manner as a reasonable man would look after his own

goods. Thus, legally the Railways Administration was bound to ensure that the consignment does not suffer from any shortage. But the shortage certificate, issued by the railways, clearly shows that there was a shortage of 814 liters of SKO. Merely because the consignment was subsequently accepted after giving a clear receipt to the railways would not absolved the railways of its liability for the shortage. For, giving of the clear receipt to the railways does not tantamount to a waiver of the right of the appellant to seek compensation. Moreover, once a liability has been created under the Railways Act and the Rules, the said clear receipt cannot act as a estopple against the appellant. Since the shortage certificate has been issued by the railways in favour of the appellant, the railways cannot escape its liability for the payment of compensation. Moreover, since the railways is part of the State under Article 12 of the Constitution of India, even in contractual matter it has to act fairly and reasonably with the appellant. Hence, the railways is liable to pay the compensation of Rs.5,903/- along with the interest @ 6% per annum to the appellant.

In the result, we quash and set aside the order dated 9.11.2000 passed by the learned Tribunal and direct the railway administration to pay Rs.5,903/- along with the interest @ 6% per annum from the date of filing of the application before the learned Tribunal to the appellant.

With these observations, this appeal is allowed.

(R.S. CHAUHAN), J.

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